

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

CASE NO.: 07-22204-CIV-GOLD/TURNOFF

v.

CHARLES O. MORGAN, JR., AS
PERSONAL REPRESENTATIVE OF
THE ESTATE OF FREDERICK J. KUNEN,

Defendant.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

TERRY E. PROVENCE and DT CAPITAL, LLC

Defendants.

**CORRECTED MOTION FOR ORDER AUTHORIZING
PAYMENT AMOUNT TO HOLDERS OF ALLOWED CLAIMS**

Scott M. Dimond, Esq., the Court-appointed Receiver of the Estate of Frederick J. Kunen and DT Capital, LLC (the "Receiver"), hereby seeks approval to adjust the amount that this Court recently approved for distribution to investors based on an error in the distribution calculation of which the undersigned just became aware. Specifically, the Total Approved Claim Amount referenced in the Receiver's recent Motion for Order Authorizing Payment was too low, primarily because a single claim was improperly excluded. As detailed herein, the correct *pro rata* distribution percentage is 16.576% rather than 17.188% as originally reported. As such, the Receiver requests approval to make distributions (which have yet to be paid) based on the proper calculation. In

support of his motion the Receiver states as follows.

1. On February 5, 2009, the Receiver filed his Motion for Order Authorizing: (1) Payment of First Distribution to Holders of Allowed Claims and of Court-approved Fees; and (2) Establishment of Reserve [D.E. 155] (the “Motion”). On February 9, 2009, the Court entered an order granting the Motion. [D.E. 156]

2. During the Receiver’s effort to process payments for allowed claims, the Receiver discovered that two claims by related, similarly named claimants (one an individual claim and one a claim by that individual’s company, which uses the same sur-name in its title) wrongly had been listed as a single claim for purposes of the Motion, causing an incorrect calculation of both the total number of claimants and, more importantly, the total amount of approved claims.

3. Specifically, the Receiver originally had confirmed – either in whole or in part – a total of sixty-eight (68) investor claims with a total amount of approved investor claims calculated at \$7,412,501.66 (the “Original Total Approved Claim Amount”). Based upon the net amount of monies available, the Receiver sought leave of Court to effect a first distribution totaling \$1,274,061.41 to holders of allowed claims (the “First Distribution Amount”). By dividing the total First Distribution Amount by the Original Total Approved Claim Amount, investors were to receive a total of 17.188% of their individual approved investor claims.

4. But based upon the discovery of the incorrect consolidation of claims, the correct amounts that should have been used in the foregoing calculation are as follows:

- a. the total number of approved claimants is sixty-nine (69); and
- b. the total amount of approved investor claims is \$7,686,119.48 (the “Corrected Total Approved Claim Amount”).

5. As such, the correct *pro rata* calculation should be the total of the First Distribution Amount (\$1,274,061.41) divided by the Corrected Total Approved Claim Amount (\$7,686,119.48), which equals 16.576% rather than the previously reported 17.188%.

6. The Receiver apologizes for the error, and will not seek compensation from the Receivership for the time spent correcting it.

7. Accordingly, based upon the foregoing corrected calculation, the Receiver proposes to send each approved claimant a payment equal to 16.576% of such claimant's approved claim on or before five (5) days from the date of an order approving the proposed plan of distribution.

8. A proposed order granting the relief requested herein is attached hereto.

Wherefore, the Receiver respectfully requests that this Court enter an order authorizing payment of the First Distribution Amount based on the revised percentage set forth herein, and providing all such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: /s Scott M. Dimond
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CERTIFICATE OF SERVICE

I **Hereby Certify** that on this 13th day of February, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/EF system which will send a notice of electronic filing to the following counsel or parties of records, except as otherwise noted:

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